# UNITED STATES DISTRICT COURT DISTRICT OF MINNESOTA

Sue Ann Adams, Patricia J. Pettenger, and Marla K. Snead on behalf of themselves and all others similarly situated,

Plaintiffs,

VS.

Case No.: 0:22-CV-509 (NED/LIB)

U.S. Bancorp, the Benefits Administration Committee and John/Jane Does 1-5,

Defendants.

#### **ANSWER TO PLAINTIFFS' CLASS ACTION COMPLAINT**

U.S. Bancorp and the Benefits Administration Committee ("Defendants"), by and through their attorneys, hereby submit their Answer and affirmative and other defenses to the complaint (the "Complaint") filed by Sue Ann Adams, Patricia J. Pettenger, and Marla K. Snead (collectively, "Plaintiffs").

#### **INTRODUCTION**

1. This is a class action against U.S. Bancorp ("U.S. Bank"), the U.S. Bank Benefits Administration Committee ("BAC"), and the BAC's individual members (collectively "Defendants") for providing early retirement benefits under the U.S. Bank Pension Plan (the "Plan") and the U.S. Bank Legacy Pension Plan (the "Legacy Plan") (together, the "Plans") that are not actuarially equivalent to the participant's single life annuity at the participant's normal retirement date as required by the Employee Retirement Income Security Act of 1974 ("ERISA"). Defendants' violation of ERISA's actuarial equivalence requirements caused retirees to lose part of their vested retirement benefits, in violation of ERISA, and to receive less in benefits each month.

ANSWER: Defendants admit that Plaintiffs purport to bring this lawsuit on behalf of a class of individuals who participated in the U.S. Bank Pension Plan (the "Plan") and the U.S. Bank Legacy Pension Plan (the "Legacy Plan") (together, the "Plans"), but deny that class certification is appropriate. Defendants deny any remaining allegations in Paragraph 1 of the Complaint.

<sup>&</sup>lt;sup>1</sup> For convenience and ease of reference only, Defendants incorporate the headings and allegations of Plaintiffs' Complaint. The Complaint contains several headings, which Defendants do not consider substantive allegations to which a response is required. However, to the extent that a responsive pleading is required, Defendants deny all allegations within any such heading.

2. U.S. Bank sponsors the Plans to provide retirement benefits for its employees. Beginning in 2002 for most, and by 2003 for all, participants began accruing benefits under a new, final average pay formula ("FAP Formula"), which U.S. Bank calls a participant's "Part B" benefits. Plaintiffs' claims stem from Defendants' methods for reducing the Part B benefits under the Plans when a participant starts collecting an early pension.

ANSWER: Defendants admit only that U.S. Bank is the sponsor of the Plans and that those Plans provide retirement benefits to certain employees. The terms of the Plans, which are set forth in written documents, detail the methodology for calculating benefit accrual for individual participants. Defendants deny any allegations in Paragraph 2 that are inconsistent with the terms of those Plan documents. The remaining allegations in Paragraph 2 are vague and ambiguous and Defendants deny those allegations.

3. ERISA § 204(c)(3), 29 U.S.C. § 1054(c)(3), provides that retirement benefits that commence prior to a plan's normal retirement date (typically age 65) be actuarially equivalent to the single life annuity ("SLA") that the participant could have selected at the normal retirement date ("NRD") based on reasonable actuarial assumptions. Determining whether two benefit forms are actuarially equivalent means comparing the present value of the total amounts expected to be received under the two forms of benefits to make sure they are equal. Using unreasonable actuarial assumptions or using fixed factors that are based on unreasonable actuarial assumptions to calculate early retirement benefits can depress those benefits resulting in benefits that are not actuarially equivalent to a participant's SLA at NRD.

ANSWER: The allegations in the first sentence of Paragraph 3 assert legal conclusions requiring no response. To the extent a response is required, Defendants admit that Plaintiffs purport to characterize and/or quote a statute, which speaks for itself. Defendants deny that Paragraph 3 accurately reflects the terms of that statute. The remaining allegations in Paragraph 3 assert a general hypothetical to which no response is required. To the extent a response is required, Defendants deny those allegations.

4. The Plans' normal retirement age is 65. When participants retire early, Defendants calculate their Part B benefits by applying a prescribed early commencement factor ("ECF") to their normal retirement benefit (*i.e.*, the participant's age-65 SLA), which reduces their benefit by a set percentage. For example, an ECF of .90 means that a participant receives 90% of the SLA he or she could have received at age 65.

**ANSWER:** The allegations in Paragraph 4 purport to characterize and/or quote the terms of the Plans, which are set forth in written documents that speak for themselves. Defendants deny any allegations that are inconsistent with the terms of those documents.

5. The ECFs that Defendants apply to participants' Part B benefits are unreasonable, excessive, and punitive, causing participants that retire early to receive benefits that are less than the actuarial equivalent of their age-65 SLA. The ECFs have not changed in 20 years and the actuarial assumptions upon which they were originally based are unreasonable and outdated. The ECFs depress the present value of early retirement benefits resulting in participants receiving monthly payments that are materially *lower* than they would be if Defendants used reasonable ECFs. For example, participants who retired at age 55 in 2021 could have their benefits improperly

reduced by an additional 40 percent compared to ECFs generated by actuarial assumptions determined by the U.S. Treasury Department to be reasonable at the time benefits began.

### ANSWER: Denied.

6. Defendants are causing Plaintiffs and the Class to receive less than they are entitled to each month. By excessively reducing Plaintiffs' benefits to account for their retirements before age 65, Defendants failed to provide them, and other similarly situated Class members, with early retirement benefits that are actuarially equivalent to their SLAs at NRD in violation of ERISA § 204(c)(3). Defendants also violated ERISA's anti-forfeiture rule, ERISA § 203(a), 29 U.S.C. § 1053(a), by causing Plaintiffs and Class members to unknowingly forfeit and lose part of their vested benefits.

# ANSWER: Denied.

7. Plaintiffs seek an order from the Court (1) declaring that the ECFs used to calculate benefits under Part B of the Plans produces benefits that are less than the actuarial equivalent of the age-65 SLA; (2) requiring Defendants to pay all amounts improperly withheld in the past and to be withheld in the future; (3) requiring Defendants to recalculate Plaintiffs' early retirement benefits in a manner consistent with ERISA § 204(c)(3)'s actuarial equivalence requirement; (4) requiring Defendants to increase the amount of Plaintiffs' future benefit payments; and (5) such other relief as the Court determines to be just and equitable.

<u>ANSWER:</u> Defendants admit that Paragraph 7 purports to characterize the relief that Plaintiffs seek but deny that Plaintiffs are entitled to any relief whatsoever.

#### **JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it is a civil action arising under the laws of the United States, and pursuant to 29 U.S.C. § 1332(e)(1), which provides for federal jurisdiction of actions brought under Title I of ERISA.

ANSWER: The allegations in Paragraph 8 state legal conclusions requiring no response. To the extent a response is required, Defendants admit that this Court has subject-matter jurisdiction over the claims asserted in the Complaint but deny that Defendants have violated ERISA or any other law. Defendants further deny that Plaintiffs are entitled to any relief whatsoever.

9. This Court has personal jurisdiction over Defendant U.S. Bank because it is headquartered in, transacts business in, and has significant contacts with this District, and because ERISA provides for nationwide service of process.

ANSWER: The allegations in Paragraph 9 state legal conclusions requiring no response. To the extent a response is required, for purposes of Plaintiffs' lawsuit, Defendants do not challenge this Court's personal jurisdiction over U.S. Bancorp.

- 10. This Court has personal jurisdiction over the BAC because it is headquartered in, transacts business in, and has significant contacts with this District, and because ERISA provides for nationwide service of process.
- ANSWER: The allegations in Paragraph 10 state legal conclusions requiring no response. To the extent a response is required, Defendants deny that the Benefits Administration Committee (the "BAC") is subject to suit or that this Court has personal jurisdiction over the BAC.
- 11. This Court has personal jurisdiction over the individual members of the BAC because, upon information and belief, each transacts business in, resides in, and has significant contacts with, this District, and because ERISA provides for nationwide service of process.
- ANSWER: The allegations in Paragraph 11 state legal conclusions requiring no response. To the extent a response is required, Plaintiffs do not name any individual BAC member as a defendant, and Defendants therefore deny the allegations in Paragraph 11.
- 12. Venue is proper in this District under ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because some or all the violations of ERISA occurred in this District and Defendants may be found in this District. Venue is also proper in this District pursuant to 28 U.S.C. § 1391 because Defendant U.S. Bank does business in this District and a substantial part of the events or omissions giving rise to the claims asserted herein occurred within this District.
- ANSWER: The allegations in Paragraph 12 state legal conclusions requiring no response. To the extent a response is required, Defendants admit that venue is proper in this Court. Defendants deny any remaining allegations in Paragraph 12.

#### **PARTIES**

#### **Plaintiffs**

- 13. Plaintiff Sue Ann Adams is a resident of Nevada, Missouri. She worked for U.S. Bank and accrued Part B benefits under the Plan from January 1, 2003, until she started receiving benefits on August 1, 2021, when she was age 63 and six months.
- ANSWER: Upon information and belief, Defendants admit the first sentence of Paragraph 13 and the portion of the second sentence that states that Plaintiff Sue Ann Adams worked for U.S. Bank and accrued Part B benefits under the Plan starting January 1, 2003, and that she started receiving benefits on August 1, 2021, when she was age 63 and six months. Defendants deny the remaining allegations in Paragraph 13.
- 14. Plaintiff Patricia Pettenger is a resident of Sterling, Illinois. She worked for U.S. Bank and accrued Part B benefits under the Plan from January 1, 2003, until she started receiving benefits on April 1, 2020, when she was age 64.
- <u>ANSWER:</u> Defendants lack knowledge or information sufficient to form a belief as to the truth of the first sentence in Paragraph 14 and therefore deny the same. Upon information and belief, Defendants admit that Plaintiff Patricia Pettenger worked for U.S. Bank and accrued Part

B benefits under the Plan starting January 1, 2003, and that she started receiving benefits on April 1, 2020, when she was age 64. Defendants deny the remaining allegations in Paragraph 14.

15. Plaintiff Marla Snead is a resident of Linville Falls, North Carolina. She worked for U.S. Bank and accrued Part B benefits under the Plan from January 1, 2003, until she started receiving benefits on July 1, 2019, when she was age 55 and 2 months.

ANSWER: Upon information and belief, Defendants admit the first sentence of Paragraph 15 and the portion of the second sentence that states that Plaintiff Marla Snead worked for U.S. Bank and accrued Part B benefits under the Plan starting January 1, 2003, and that she started receiving benefits on July 1, 2019, when she was age 55 and 2 months. Defendants deny the remaining allegations in Paragraph 15.

# **Defendants**

16. Defendant U.S. Bank is a financial services company headquartered in Minneapolis, Minnesota that provides a full range of financial services, including lending and depository services, cash management, capital markets services, investment management, credit card services and mortgage banking.

# **ANSWER:** Admitted.

17. The BAC is a named fiduciary under ERISA. U.S. Bank appoints the Committee members.

**ANSWER:** The allegations in Paragraph 17 purport to characterize the terms of the Plans, which are set forth in written documents that speak for themselves. Defendants deny any allegations that are inconsistent with the terms of those documents.

18. John/Jane Does 1 through 5, inclusive, are the individual members of the BAC responsible for administering the Plan throughout the Class Period. Their names and identities are not currently known.

# ANSWER: Denied.

#### **APPLICABLE ERISA REQUIREMENTS**

#### Early Retirement Benefits Must Be Actuarially Equivalent

19. ERISA § 204(c)(3), 29 U.S.C. § 1054(c)(3), provides that if a participant takes his or her benefit before normal retirement age, or in a form other than a single life annuity, the accrued benefit must be the "actuarial equivalent" of the single life annuity the participant could have taken at age 65. "What these provisions mean in less technical language is that: (1) the accrued benefit under a defined benefit plan must be valued in terms of the annuity that it will yield at normal retirement age; and (2) if the benefit is paid at any other time (e.g., on termination rather than retirement) or in any other form (e.g., a lump sum distribution, instead of annuity) it must be worth at least as much as that annuity." *Esden v. Bank of Boston*, 229 F.3d 154, 163 (2d Cir. 2000).

- ANSWER: The allegations in Paragraph 19 purport to characterize and/or quote a statute and court decision, which speak for themselves. Defendants deny any allegations that are inconsistent with the terms of that statute and court decision.
- 20. The Treasury Regulation for the Tax Code provision corresponding to ERISA § 204 (26 U.S.C. § 411), states that the determination of whether two benefits are actuarially equivalent shall be made "by the Commissioner [of Internal Revenue]" 26 C.F.R. § 1.411(c)-1(e). According to a regulation adopted by the Commissioner, early retirement benefits must be calculated "in accordance with reasonable actuarial assumptions." 26 C.F.R. § 1.401(a)-14(c)(2).
- <u>ANSWER:</u> The allegations in Paragraph 20 purport to characterize and/or quote certain regulations, which speak for themselves. Defendants deny any allegations that are inconsistent with the terms of those regulations.
- 21. ERISA § 203(a), 29 U.S.C. § 1053(a), also provides that an employee's right to the vested portion of his or her normal retirement benefit is non-forfeitable. The Treasury regulation for the Tax Code provision corresponding to ERISA § 203 (26 U.S.C. § 411), prohibits "adjustments in excess of reasonable actuarial reductions. . . . "26 C.F.R. § 1.411(a)-4(a).
- ANSWER: The allegations in Paragraph 21 purport to characterize and/or quote a statute and regulation, which speak for themselves. Defendants deny any allegations that are inconsistent with the terms of that statute and regulation.
- 22. "Two modes of payment are actuarially equivalent when their *present values are equal* under a given set of assumptions." *Stephens v. US Airways Group, Inc.*, 644 F.3d 437, 440 (D.C. Cir. 2011) (emphasis added) (citing Jeff L. Schwartzmann & Ralph Garfield, Education and Examination Comm. of the Society of Actuaries, Actuarially Equivalent Benefits 1, EA1-24-91 (1991) ("Schwartzmann & Garfield"). Actuarial equivalence should be "cost-neutral," meaning that neither the plan nor the participants should be better or worse off if a participant selects early retirement benefits or an age-65 SLA. *See Bird v. Eastman Kodak Co.*, 390 F. Supp. 2d 1117, 1118–19 (M.D. Fla. 2005); *see also Berger v. Xerox Corp. Ret. Income Guarantee Plan*, 338 F.3d 755, 761 (7th Cir. 2003) ("Any distribution that [a participant] receives earlier is the commutation of . . . accrued benefits to their present-value"); *Smith v. Rockwell Automation*, No. 19-C-0505, 2020 WL 620221, \* 7 (E.D. Wisc. Jan. 10, 2020) ("plans must use the kind of actuarial assumptions that a reasonable actuary would use at the time of the benefit determination.")
- <u>ANSWER:</u> The allegations in Paragraph 22 purport to characterize and/or quote certain court decisions, which speak for themselves. Defendants deny any allegations that are inconsistent with the terms of those court decisions.
- 23. Under ERISA, "present value" means "the value adjusted to reflect anticipated events. Such adjustments shall conform to such regulations as the Secretary of the Treasury may prescribe." ERISA § 3(27), 29 U.S.C. § 1002(27). The Secretary has prescribed numerous regulations explaining how calculating present value requires the use of reasonable actuarial assumptions:
- (a) Treasury regulations provide that "[e]quivalence may be determined, on the basis of consistently applied *reasonable actuarial factors*, for each participant or for all

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participants or reasonable groupings of participants." 26 C.F.R. § 401(a)-11(b)(2) (emphasis added).

- (b) A plan must determine optional benefits using "a single set of *interest and mortality assumptions that are reasonable*..." 26 C.F.R. § 1.417(a)(3)-1(c)(2)(iv) (emphasis added).
- (c) With respect to benefits under a lump sum-based formula, any optional form of benefit must be "at least the actuarial equivalent, using *reasonable actuarial assumptions* . . . ." 26 C.F.R. § 1.411(a)(13)-1(b)(3) (emphasis added).

<u>ANSWER:</u> The allegations in Paragraph 23 purport to characterize and/or quote a statute and certain regulations, which speak for themselves. Defendants deny any allegations that are inconsistent with the terms of that statute and those regulations.

# **SUBSTANTIVE ALLEGATIONS**

#### I. The Plan

24. The Plan is administered by U.S. Bank, which has delegated to the BAC the role of supervising the general operation and administration of the Plan.

<u>ANSWER:</u> The allegations in Paragraph 24 appear to purport to characterize the terms of the Plan, which are set forth in a written document that speaks for itself. Defendants deny any allegations that are inconsistent with the terms of that document.

25. The Plan is an "employee pension benefit plan" within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(a)(A).

# **ANSWER:** Admitted.

26. The Plan is a defined benefit plan within the meaning of ERISA § 3(35), 29 U.S.C. § 1002(35).

# **ANSWER:** Admitted.

#### A. Benefit Accrual Formulas

27. The Plan has different benefit accrual formulas based on an employee's dates of service. As of January 1, 2002, the U.S. Bank Cash Balance Plan ("pre-2002 CB Plan") and the Firstar Plan, which included the Mercantile Plan, were merged. Benefits accrued before that date are referred to as "Part A" benefits.

ANSWER: The allegations in Paragraph 27 purport to characterize and/or quote the terms of the Plan, which are set forth in a written document that speaks for itself. Defendants deny any allegations that are inconsistent with the terms of that document.

- 28. Beginning January 1, 2002, for participants in the pre-2002 CB Plan and the Firstar Plan and January 1, 2003, for participants in the Mercantile Plan, the Plan changed to the Final Average Pay formula. Under the FAP formula, participants earned retirement benefits based on their highest average pay and the number of years of service. These benefits are referred to as "Part B" benefits.
- ANSWER: The allegations in Paragraph 28 purport to characterize and/or quote the terms of the Plan, which are set forth in a written document that speaks for itself. Defendants deny any allegations that are inconsistent with the terms of that document.
- 29. Effective November 15, 2009, new employees did not accrue benefits under the Part B, FAP formula; instead, they would participate in the 2010 Cash Balance Plan, a component of the Plan. See 2016 Plan Restatement, Appendix I. Under the 2010 Cash Balance Plan, participants receive an annual pay credit to a hypothetical plan account and earn interest on those credits. See 2010 Cash Balance Plan at § 2.1.1. These benefits are referred to as "Part C" benefits.
- ANSWER: The allegations in Paragraph 29 purport to characterize and/or quote the terms of the Plan and the 2010 Cash Balance Plan, which are set forth in written documents that speak for themselves. Defendants deny any allegations that are inconsistent with the terms of those documents.
- 30. Starting in 2010, participants with Part B benefits could choose whether they would continue to accrue Part B benefits or begin accruing Part C benefits under the 2010 Cash Balance Plan's formula. Plan participants that did not choose to accrue benefits under the Part C formula continued to accrue Part B benefits.
- <u>ANSWER:</u> The allegations in Paragraph 30 purport to characterize and/or quote the terms of the Plan and the 2010 Cash Balance Plan, which are set forth in written documents that speak for themselves. Defendants deny any allegations that are inconsistent with the terms of those documents.
- 31. This case concerns participants who receive Part B benefits and concerns *only* their Part B benefits.

#### ANSWER: Denied.

# B. The Part B Early Commencement Factors

- 32. The Plans adjust a participant's benefits when he or she retires early. To account for the additional years of payments a participant receives when he or she retires before age 65, the Plans reduce the amount of a participant's benefit compared to the benefit the participant would have received at age 65. A participant who retires early is foregoing a higher monthly amount in exchange for additional benefit payments (*i.e.*, those before age 65).
- ANSWER: The allegations in Paragraph 32 purport to characterize and/or quote the terms of the Plans, which are set forth in written documents that speak for themselves. Defendants deny any allegations that are inconsistent with the terms of those documents.

33. Participants can begin receiving their Part B benefits at age 55 if they have five or more years of service. *Id.*, §§ 5.2 and 2.1.14. When participants with Part B benefits retire before age 65, their age-65 SLA is reduced by the ECFs in the Plans. *Id.*, § 5.2.2.

**ANSWER:** The allegations in Paragraph 33 purport to characterize and/or quote the terms of the Plans, which are set forth in written documents that speak for themselves. Defendants deny any allegations that are inconsistent with the terms of those documents.

34. Defendants apply the following ECFs to a participant's age-65 SLA to calculate early Part B benefits:

Age	Part B's ECFs
55	0.38
56	0.42
57	0.46
58	0.50
59	0.55
60	0.60
61	0.66
62	0.73
63	0.81
64	0.90
65	1.00

**ANSWER:** The allegations in Paragraph 34 purport to characterize and/or quote the terms of the Plans, which are set forth in written documents that speak for themselves. Defendants deny any allegations that are inconsistent with the terms of those documents.

35. The Plans adjust the ECF to account for the months between full year age categories. For example, Defendants apply an ECF of .40 when a participant retires at 55 years and 6 months. So, if a participant's age-65 SLA is \$1,000 a month, the participant's SLA at 55 and 6 months is \$400.

**ANSWER:** The allegations in Paragraph 35 purport to characterize and/or quote the terms of the Plans, which are set forth in written documents that speak for themselves. Defendants deny any allegations that are inconsistent with the terms of those documents.

#### C. Benefit Forms Other than an SLA

36. The Plans offer several different benefit forms other than an SLA. To calculate the amount payable under these other forms, the Plans adjust a participant's benefit amount payable as an SLA when the participant retires.

- **ANSWER:** The allegations in Paragraph 36 purport to characterize and/or quote the terms of the Plans, which are set forth in written documents that speak for themselves. Defendants deny any allegations that are inconsistent with the terms of those documents.
- 37. The Plan offers three joint and survivor annuity ("JSA") options that pay a specified percentage of the participant's benefit to a spouse or beneficiary after the participant's death. A 50% JSA pays the spouse or beneficiary a monthly payment that is half the monthly benefit amount that was paid to the participant during the participant's lifetime. Because JSAs could potentially pay monthly benefits over the course of two lifetimes instead of one, the participant's benefit is reduced compared to the SLA he or she would have received.
- **ANSWER:** The allegations in Paragraph 37 purport to characterize and/or quote the terms of the Plans, which are set forth in written documents that speak for themselves. Defendants deny any allegations that are inconsistent with the terms of those documents.
- 38. The Plan calculates a 50% JSA by multiplying the SLA that the participant could have received when the participant retires by .92, regardless of the participant's age. For instance, if a participant was entitled to receive \$1,000 a month as an SLA, the participant would receive \$920 if she chose a 50% JSA.
- **ANSWER:** The allegations in Paragraph 38 purport to characterize and/or quote the terms of the Plans, which are set forth in written documents that speak for themselves. Defendants deny any allegations that are inconsistent with the terms of those documents.
- 39. The 75% JSA is calculated by multiplying a participant's SLA by .89. The 100% JSA is calculated by multiplying a participant's SLA by .86. Like the 50% JSA factors, the .89 and .86 factors are fixed and do not change depending on the participant's age.
- ANSWER: The allegations in Paragraph 39 purport to characterize and/or quote the terms of the Plans, which are set forth in written documents that speak for themselves. Defendants deny any allegations that are inconsistent with the terms of those documents.
- 40. The Plans also offer Estate Protection Annuities ("EPAs"), which can be combined with the SLA, the 50% JSA or the 100% JSA, that pay a lump sum benefit to the participant's beneficiary after the participant's death.
- <u>ANSWER:</u> The allegations in Paragraph 40 purport to characterize and/or quote the terms of the Plans, which are set forth in written documents that speak for themselves. Defendants deny any allegations that are inconsistent with the terms of those documents.
- 41. In addition, participants can receive their Part B benefit as a lump sum if it has a present value of less than \$5,000, calculated using the mortality table identified in 26 U.S.C § 417(e)(3)(B) of the Internal Revenue Code (the "Applicable Mortality Table") and the segment interest rates under § 417(e)(3)(C) (the "Applicable Interest Rates") (collectively the "Treasury Assumptions") from October of the previous year.

**ANSWER:** The allegations in Paragraph 41 purport to characterize and/or quote the terms of the Plans, which are set forth in written documents that speak for themselves. Defendants deny any allegations that are inconsistent with the terms of those documents.

# D. The Legacy Plan

42. On August 26, 2020, U.S. Bank amended the Plan to spin-off into the Legacy Plan the liabilities relating to (1) participants that had retired before January 1, 2020, and (2) terminated vested participants. The amendment did not change the Plan's existing terms or those that Defendants applied to calculate the Part B benefits of existing retirees. The Plan and the Legacy Plan "have substantively identical terms, and the spinoff did not affect any benefit amounts accrued by Plan participants." Plan's 2020 Form 5500, Notes Financial Statements at 4.

ANSWER: The allegations in Paragraph 42 purport to characterize and/or quote the terms of the Plans and the Plan's 2020 Form 5500, which are written documents that speak for themselves. Defendants deny any allegations that are inconsistent with the terms of those documents.

43. Under this amendment, Plaintiffs remained participants in the Plan. When they retired, Defendants calculated their Part B benefits by using the same ECFs and conversion factors that they had applied to participants in the Legacy Plan.

ANSWER: Defendants deny that Plaintiff Marla Snead and Plaintiff Patricia Pettenger remained participants in the Plan following the amendment of the Plan on August 26, 2020. Defendants admit the remaining allegations in Paragraph 43.

# **II.** The Concept of Present Value

44. ERISA requires that a plan participant receive the "actuarial equivalent" of the accrued benefit payable at "normal retirement age." ERISA § 204(c)(3), 29 U.S.C. § 1054(c)(3). Two benefits are actuarially equivalent if the present values of the two benefits — calculated using the same, reasonable actuarial assumptions — are the same. *Stephens*, 644 F.3d at 440. This means that a participant's early retirement benefit should have the same present value — based on reasonable actuarial assumptions — as the SLA the participant could have taken when he or she reached normal retirement age. *See* 26 C.F.R. § 1.401(a)-14(c)(2). Determining whether an early retirement benefit is actuarially equivalent to the age-65 SLA requires calculating the present value of both benefits.

ANSWER: The allegations in Paragraph 44 purport to characterize and/or quote the terms of a statute, a court decision, and a regulation, all of which are written documents that speak for themselves. Defendants deny any allegations that are inconsistent with the terms of those documents.

45. Calculating the present value of two benefit forms generally requires two actuarial assumptions: an interest (or discount) rate and a mortality table.

**ANSWER:** The allegations in Paragraph 45 are vague and ambiguous and Defendants deny those allegations.

46. Because benefit payments from a defined benefit plan are fixed as of the date a participant (or, sometimes, their surviving beneficiary) begins receiving benefits — the Benefit Commencement Date or "BCD" — determining whether an early retirement benefit is actuarially equivalent to an age-65 SLA requires comparing the present values of both benefits using interest and mortality rate assumptions that were reasonable as of the participant's BCD.

**ANSWER:** The allegations in Paragraph 46 state legal conclusions requiring no response. To the extent a response is required, Defendants deny those allegations.

#### A. Discount Rates

47. A discount rate is used to determine the present value of each future payment that a participant will receive. The rate is based on the time value of money, meaning that money available now is worth more than the same amount in the future due to the ability to earn investment returns. As long as interest rates are greater than 0%, a future payment is not worth as much to a recipient as a current payment. The further in the future the payment, the less it is worth to the recipient.

**ANSWER:** The allegations in Paragraph 47 assert a hypothetical to which no response is required. To the extent a response is required, Defendants deny those allegations.

48. The rate used is often called a "discount rate" because it discounts to the present the value of a future payment. When calculating present value, the higher the interest rate assumption — mortality rates being equal — the lower the amount of the benefit and the lower the ECF.

**ANSWER:** The allegations in Paragraph 48 assert a hypothetical to which no response is required. To the extent a response is required, Defendants deny those allegations.

49. A discount rate may be based on a single rate or a series of rates, such as a yield curve. For example, a discount rate could be a single rate of 5% or it could be based on a yield curve that, for example, uses a 2% rate to discount the first payment due and a 5% rate to discount the last payment. The "segment" interest rates set by the Treasury Department and prescribed for the calculation of lump sum benefits by ERISA § 205(g)(3), 29 U.S.C. § 1055(g)(3), and § 417(e)(3) is one way that a pension plan could select a discount rate for calculating pension benefits. The § 417(e) rates are based on corporate bond rates and provide an average interest rate for years 0–5 ("1st Segment"), years 5–19 ("2nd Segment") and years 20 and later ("3nd Segment"). 26 U.S.C. § 417(e)(3)(C) and (D). Other commonly used yield curves are the Mercer Yield Curve and the FTSE Pension Liability Index which are also based on corporate bond rates. These indexes are each updated on a monthly basis.

ANSWER: The allegations in the first two sentences of Paragraph 49 assert a hypothetical to which no response is required. To the extent a response is required, Defendants deny those allegations. The third and fourth sentences of Paragraph 49 purport to characterize and/or quote a statute, which speaks for itself. Defendants deny any allegations inconsistent with the terms of that statute. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 49 and therefore deny the same.

50. For the discount rate that a defined benefit plan uses to calculate ECFs to be reasonable, it must be based on prevailing market conditions and projections of future market conditions when the payments will be made. In other words, the discount rate must "reflect anticipated events." See 29 U.S.C. § 1002(27).

**ANSWER:** The allegations in Paragraph 50 purport to characterize and/or quote a statute, which speaks for itself. Defendants deny any allegations that are inconsistent with the terms of that statute.

51. Since 1987, the Financial Accounting Standards Board has required that plan sponsors use a discount rate derived from the yields of high-quality bonds to measure their pension obligations. Starting in the late 1990s, there was a shift towards using high-quality corporate bond yields to determine discount rates when calculating pension liabilities. For example, the Pension Protection Act of 2006 provided that corporate bond yields be used to set the discount rates for defined benefit plan funding and for calculating lump sum payments as alleged above.

**ANSWER:** Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 51 and therefore deny the same.

52. Using bonds with maturations that match (or closely resemble) the projected future pension payments provides an accurate indicator of "anticipated events" and is, therefore, appropriate for calculating the present value of future payments. For example, the interest rate for a bond with a 20-year maturity is an accurate way of calculating the value of a pension payment expected to be made in 20 years. Thus, pension plans should adopt a rate or series of rates that closely reflect the yields of high-quality corporate bonds when selecting an interest rate for present value calculations.

**ANSWER:** The allegations in Paragraph 52 state legal conclusions requiring no response. To the extent a response is required, Defendants deny those allegations.

53. The Actuarial Standards Board ("ASB") — the body responsible for drafting the Actuarial Standards of Practice ("ASOPs") — provides standards for determining discount rates. ASOP 27 explains that discount rate assumptions should be "reasonable" and should account for "historical and current economic data that is relevant as of the measurement date." See ASOP 27, § 3.6. In other words, the ASOPs provide for the use of "a hypothetical bond portfolio whose cash flows reasonably match the pattern of benefits paid in the future." *Id*.

**ANSWER:** The allegations in Paragraph 53 purport to characterize and/or quote written documents, which speak for themselves. Defendants deny any allegations that are inconsistent with the terms of those documents.

54. An interest rate reflecting corporate bond yields, like the § 417(e) segment rates, would have been reasonable to use when calculating the ECFs the Plans applied to participants' Part B benefits at BCD.

**ANSWER:** The allegations in Paragraph 54 state legal conclusions requiring no response. To the extent a response is required, Defendants deny those allegations.

55. U.S. Bank's methodology for measuring its pension liabilities is strikingly similar to how the Segment Rates are determined, as explained in ¶ 49 above, as both use corporate bond yields to determine the present value of future payments.

**ANSWER:** To the extent that Paragraph 55 purports to characterize and/or quote written documents, those documents speak for themselves. Defendants deny any allegations that are inconsistent with the terms of those documents. Defendants deny all remaining allegations in Paragraph 55.

56. The discount rate that U.S. Bank uses in its 10Ks to measure the present value of its pension liabilities combines the future payments that it expects to make to each participant. The rates U.S. Bank used were:

Year Ending	Discount Rate
12/31/2015	4.45%
12/31/2016	4.27%
12/31/2017	3.84%
12/31/2018	4.45%
12/31/2019	3.40%
12/31/2020	$2.75\%^2$

The single discount rates that U.S. Bank discloses closely track those in corporate indexes such as the Mercer Yield Curve and the FTSE Pension Liability Index that are widely used in the pension industry and would have been reasonable discount rates to use when determining the ECFs the Plans applied to participants' Part B benefits at BCD.

**ANSWER:** To the extent that Paragraph 56 purports to characterize and/or quote written documents, those documents speak for themselves. Defendants deny any allegations that are inconsistent with the terms of those documents. Defendants deny all remaining allegations in Paragraph 56.

#### **B.** Mortality Tables

57. A mortality table predicts how many people at a given age will die before attaining the next higher age. Mortality tables have been updated periodically to account for improvements in sanitation, diet, medicine, and general lifestyle for U.S. residents, and in data quality and statistical modeling.

<sup>&</sup>lt;sup>2</sup> The interest rates used in US Bank's 10-Ks from 2015 through 2021 can be found in at: https://ir.usbank.com/investor-relations/financial-information/sec-and-other-filings?field\_nir\_sec\_form\_group\_target\_id%5B%5D=471&field\_nir\_sec\_date\_filed\_val ue=#views-exposed-form-widget-sec-filings-table

**ANSWER:** Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 57 and therefore deny the same.

58. More recent mortality tables are "two-dimensional" in that the rates are based not only on the age of the individual but the year of birth. The Society of Actuaries, an independent actuarial group, publishes the mortality tables that are the most widely-used by defined benefit plans and are developed from the mortality experience of pension plan participants. The SOA published new mortality tables in 1971, 1983, 1984 (the "UP 1984"), 1994 (the "1994 GAR"), 2000 (the "RP-2000"), 2014 ("RP-2014") and 2019 (the "PRI-2012") to account for changes to a population's mortality experience.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first two sentences of Paragraph 58 and therefore deny the same. The allegations in the third sentence of Paragraph 58 purport to characterize and/or quote written documents that speak for themselves. Defendants deny any allegations that are inconsistent with the terms of those documents.

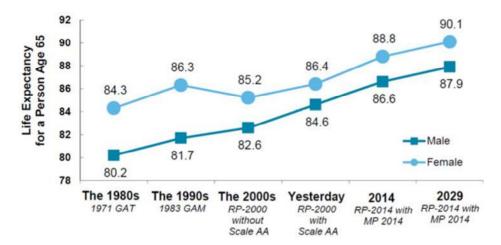
59. Like the interest rate assumption, the mortality assumption should reflect "anticipated events." ASOP 35 states that an actuary should select "reasonable" demographic assumptions that take "into account historical and current demographic data that is relevant as of the measurement date," and reflect "the actuary's estimate of future experience. . . ." ASOP 35, ¶ 3.3.5. Paragraph 3.5.3 of ASOP 35 directs the actuary to use an assumption that "reflect[s] the effect of mortality improvement both before and after the measurement date." Id., ¶ 3.5.3.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation in the first sentence of Paragraph 59 and therefore deny the same. The allegations in the second and third sentences of Paragraph 59 purport to characterize and/or quote written documents that speak for themselves. Defendants deny any allegations that are inconsistent with the terms of those documents.

60. Since mortality assumptions must account for anticipated improvements in mortality between the promulgation of new mortality tables, in the years between the publication of a new mortality table, mortality rates are often "projected" to future years using a mortality improvement scale to account for expected improvements in mortality. For example, the RP-2014 mortality table — which remains a commonly used mortality table — is projected forward using a mortality improvement scale to account for additional reductions in mortality rates that have occurred since 2014.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation in the first sentence of Paragraph 60 and therefore deny the same. The allegations in the second sentence of Paragraph 60 purport to characterize and/or quote written documents that speak for themselves. Defendants deny any allegations that are inconsistent with the terms of those documents.

61. Life expectancies shown in standard mortality tables used to perform pension calculations are much higher for more recent tables than those shown in mortality tables from decades ago, as shown in this chart:



Source: Aon Hewitt, Society of Actuaries Finalizes New Mortality Assumptions: The Financial and Strategic Implication for Pension Plan Sponsors (November 2014) at 1.

<u>ANSWER:</u> The allegations in Paragraph 61 purport to characterize and/or quote written documents that speak for themselves. Defendants deny any allegations that are inconsistent with the terms of those documents.

62. Older mortality assumptions (*i.e.*, those using a mortality table with higher probabilities of death at a given age) generate lower present values of future payments, and the amount of the monthly benefit decreases. Accordingly, the use of older mortality assumptions results in lower ECFs and lower Part B benefits for those that retire before age 65.

**ANSWER:** The allegations in Paragraph 62 assert a general hypothetical to which no response is required. To the extent a response is required, Defendants deny those allegations.

63. U.S. Bank has recognized that mortality rates have improved, using current mortality tables to calculate its pension liabilities in its financial statements. Under Generally Accepted Accounting Principles ("GAAP"), the mortality assumption "should represent the 'best estimate' for that assumption as of the current measurement date." Accordingly, on the recommendation of its "independent actuary," U.S. Bank used the RP-2014 mortality table with a customized improvement scale at the end of 2014. *See*, *e.g.*, Plan's 2014 Form 5500, Financial Statements at 21–22. U.S. Bank has continued to use the RP-2014 mortality table as its "best estimate" of Plan participant mortality in each subsequent year.

**ANSWER:** To the extent that Paragraph 63 purports to characterize and/or quote written documents, those documents speak for themselves. Defendants deny any allegations that are inconsistent with the terms of those documents. Defendants deny all remaining allegations in Paragraph 63.

64. The custom mortality tables that U.S. Bank has used as its "best estimate" have closely tracked the "Applicable Mortality Tables" that the Treasury Department has approved each year during the Class Period and that U.S. Bank uses to calculate several forms of benefit, including the ECFs for Part C.

**ANSWER:** To the extent that Paragraph 64 purports to characterize and/or quote written documents, those documents speak for themselves. Defendants deny any allegations that are inconsistent with the terms of those documents. Defendants deny all remaining allegations in Paragraph 64.

65. Throughout the Class Period, the use of the mortality table prescribed by § 417(e) would have been *reasonable* to use when calculating ECFs for the Plan's Part B benefits on each participant's BCD.

**ANSWER:** The allegations in Paragraph 65 state legal conclusions requiring no response. To the extent a response is required, Defendants deny those allegations.

# III. The Plans Do Not Provide Early Part B Benefits That Are Actuarially Equivalent

#### A. The Part B ECFs Are Unreasonable.

66. The Plans do not specify the mortality or discount rate assumptions underlying the Part B ECFs. Rather, the ECFs are fixed, stated as a percentage of the participant's age-65 SLA. While the actuarial basis is not stated, the ECFs that apply to Part B benefits have not changed since 2002, despite substantial changes in mortality and interest rates that would generate higher ECFs. For example, life expectancies increased by four years and the discount rates have declined.

ANSWER: The allegations in the first three sentences of Paragraph 66 purport to characterize and/or quote the terms of the Plans, which are set forth in written documents that speak for themselves. Defendants deny any allegations that are inconsistent with the terms of those documents. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the fourth sentence of Paragraph 66 and therefore deny the same.

67. The Part B ECFs are not reasonable as of each participant's BCD and do generate early retirement benefit amounts that are actuarially equivalent to the age-65 SLA participants could have selected when compared to ECFs generated based on reasonable, current actuarial assumptions. The chart below compares the Part B ECFs to those generated by the Treasury Assumptions for 2021.

Age	Part B's ECFs	ECFs Generated By 2021	Difference
		Treasury Assumptions	
55	.38	.55	43.8%
56	.42	.59	39.6%
57	.46	.63	36.3%
58	.50	.67	33.8%
59	.55	.71	29.4%
60	.60	.76	26%
61	.66	.80	21.4%
62	.73	.85	16.2%
63	.81	.90	10.7%
64	.90	.95	5.3%

ANSWER: The allegations in the first sentence of Paragraph 67 state legal conclusions requiring no response. To the extent a response is required, Defendants deny those allegations. The second sentence of Paragraph 67 and the chart below that paragraph purport to characterize and/or quote written documents that speak for themselves. Defendants deny any allegations that are inconsistent with the terms of those documents.

68. During each year of the Class Period, the ECFs generated using either the reasonable Treasury Assumptions or high-grade corporate bond index rates were substantially more favorable for participants than the ECFs Defendants used to calculate Part B benefits. The Part B ECFs result in participants that retire before age 65 receiving benefits that are substantially lower — in each form of annuity benefits that the Plans offer — than if Defendants used reasonable interest and mortality rates as required by ERISA. Defendants' application of these unreasonably low ECFs to calculate participants' early Part B benefits violates ERISA's actuarial equivalence requirement and results in monthly payments that are lower than participants should receive.

**ANSWER:** Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 68 and therefore deny the same. The allegations in the second and third sentences of Paragraph 68 state legal conclusions requiring no response. To the extent a response is required, Defendants deny those allegations.

# B. The Part B ECFs Are Unreasonable Compared to Those in Other Parts of the Plans

69. The Part B ECFs are substantially worse for participants and are unreasonable compared to the ECFs in other parts of the Plans. For example, participants' benefits under the Firstar Plan are reduced by only 1/180 for each month between ages 60 and 65, or 6 and 2/3% each year. Between ages 55 and 60, they are reduced by only 1/360 for each month, or 3 and 1/3% per year.

ANSWER: The allegations in the first sentence of Paragraph 69 state legal conclusions requiring no response. To the extent a response is required, Defendants deny those allegations. The allegations in the second and third sentences of Paragraph 69 purport to characterize and/or quote written documents, which speak for themselves. Defendants deny any allegations that are inconsistent with the terms of those documents.

70. The Part A ECFs, under the Firstar Plan, Part B ECFs, and the difference between the two are shown below:

Age	Part A ECF (Firstar	Part B ECF	Difference
	Plan)		
55	.5	.38	24%
56	.534	.42	21%
57	.567	.46	19%
58	.60	.50	17%
59	.633	.55	13%
60	.666	.60	10%
61	.733	.66	10%

62	.80	.73	9%
63	.866	.81	6%
64	.933	.90	3%

<u>ANSWER:</u> The allegations in Paragraph 70 purport to characterize and/or quote the terms of the Plans, which are written documents that speak for themselves. Defendants deny any allegations that are inconsistent with the terms of those documents.

71. The Part B ECFs are also substantially worse for participants and are unreasonable compared to the ECFs applied to participants with pre-2002 CB Plan or Mercantile Plan benefits under Part A or Part C. Both use the Treasury Assumptions, which, as shown in the chart in ¶ 67, above, generate ECFs that are substantially higher for participants.

ANSWER: To the extent that Paragraph 71 purports to characterize and/or quote the terms of the Plans, those are written documents that speak for themselves. Defendants deny any allegations that are inconsistent with the terms of those documents. The remaining allegations in Paragraph 71 are legal conclusions requiring no response. To the extent that a response is required, Defendants deny those allegations.

72. The Plans also permit participants in the U.S. Bancorp 401(k) Savings Plan ("401K Plan") to roll over all or part of their 401K Plan accounts into the Plans in order to purchase an annuity. See id. at § 6.5. When 401K Plan participants do so, the amount they transfer is converted to an annuity using the Treasury Assumptions. See id. at § 6.5.

<u>ANSWER:</u> The allegations in Paragraph 72 purport to characterize and/or quote the terms of the Plans, which are written documents that speak for themselves. Defendants deny any allegations that are inconsistent with the terms of those documents.

#### IV. Plaintiffs' Benefits Are Not Actuarially Equivalent to Their Age-65 SLAs

73. Plaintiff Adams began receiving her pension benefits in August 2021, when she was age 63 and 6 months. She is receiving Part B benefits as an SLA that pays her \$844.95 per month. Her benefit was calculated using an ECF of 0.855. In other words, her SLA at BCD is 85.5% of her age-65 SLA.

ANSWER: Upon information and belief, Defendants admit the first sentence of Paragraph 73. Defendants admit that Plaintiff Adams' pension benefit was calculated in accordance with the terms of the Plans, which are written documents that speak for themselves, and Defendants deny any allegations that are inconsistent with those calculations. Defendants currently lack sufficient information to admit or deny the allegations in the second and third sentences of Paragraph 73 and such allegations are therefore denied.

74. Plaintiff Pettenger began receiving her pension benefits in April 2020, when she was age 64. She is receiving Part B benefits as an SLA that pays her \$905.93 a month. Her benefit was calculated using an ECF of 0.900. In other words, her Part B SLA is 90% of her age-65 SLA. Plaintiff Pettenger is also receiving Part A Mercantile benefits as an SLA of \$97.40 per month. However, as discussed, Part A benefits are reduced using ECFs based on the applicable Treasury

Assumptions at BCD, which are reasonable. Therefore, the harm to Plaintiff Pettenger stems entirely from the excessive reductions to her Part B benefits.

ANSWER: Upon information and belief, Defendants admit the first sentence of Paragraph 74. Defendants admit that Plaintiff Pettenger's pension benefit was calculated in accordance with the terms of the Plans, which are written documents that speak for themselves, and Defendants deny any allegations that are inconsistent with those calculations. Defendants currently lack sufficient information to admit or deny the allegations in the second through sixth sentences of Paragraph 74, and such allegations are therefore denied. The remaining allegations of Paragraph 74 state legal conclusions requiring no response. To the extent a response is necessary, Defendants deny those allegations.

75. Plaintiff Snead began receiving her pension benefits in July 2019, when she was age 55 and 2 months. She is receiving her Part B benefits as a 100% JSA that pays her \$176.35 a month. To calculate her 100% JSA, Defendants first reduced her SLA at NRD (\$530.33) using an ECF of 0.386, which produced an SLA at BCD of \$205.06. Then, Defendants reduced her early retirement SLA at BCD (\$205.06) by the Plan's 100% JSA reduction factor (0.86), resulting in a monthly benefit of \$176.35. Plaintiff Snead is also receiving Part A Mercantile benefits as a 100% JSA of \$100.00 per month. Again, her Part A benefits are reduced using ECFs based on the applicable Treasury Assumptions and, therefore, the harm to Plaintiff Snead stems entirely from her Part B benefits.

ANSWER: Upon information and belief, Defendants admit the first sentence of Paragraph 75. Defendants admit that Plaintiff Snead's pension benefit was calculated in accordance with the terms of the Plans, which are written documents that speak for themselves, and Defendants deny any allegations that are inconsistent with those calculations. Defendants currently lack sufficient information to admit or deny the allegations in the second through fifth sentences of Paragraph 75, and such allegations are therefore denied. The remaining allegations in Paragraph 75 state legal conclusions requiring no response. To the extent a response is necessary, Defendants deny those allegations.

76. If Defendants had applied ECFs based on current, reasonable actuarial assumptions, such as the applicable Treasury Assumptions, Plaintiffs' monthly benefit payments would be higher throughout their retirements. Had the Plans applied an ECF based on the Treasury Assumptions, Plaintiff Adams' monthly benefit would be \$911.30, or \$66.35 per month higher than what she is currently receiving. Plaintiff Pettenger's monthly benefit would be \$946.51, or \$40.58 per month higher than what she is currently receiving. Plaintiff Snead's 100% JSA at BCD would be \$222.99, or \$46.64 per month higher than the benefit she is currently receiving.

**ANSWER:** The allegations in Paragraph 76 assert a hypothetical to which no response is required. To the extent a response is required, Defendants deny those allegations.

77. Plaintiffs are, and have been, receiving benefits that are not actuarially equivalent to their age-65 SLAs and are materially less than they should be, in violation of ERISA §§ 204(c)(3) and 203(a). Plaintiff Adams' past damages (as of January 1, 2022) are \$331.75, and her future damages are \$12,901.80, for a total of \$13,233.55. Plaintiff Pettenger's damages (as of January 1, 2022) are \$852.18, and her future damages are \$7,494.29, for a total of \$8,346.47.

Plaintiff Snead's damages (as of January 1, 2022) are \$1,399.20, and her future damages are \$11,921.48, for a total of \$13,320.68.

#### **ANSWER:** Denied.

#### **CLASS ACTION ALLEGATIONS**

78. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and the class (the "Class") defined as:

All participants in the Plans, or their beneficiaries, (1) whose BCD is on or after March 1, 2016; (2) who received Part B annuity benefits that were reduced by the Part B ECFs; and (3)

where the actuarial present value of their annuity benefit as of BCD was less than the actuarial present value of their age-65 SLA using the applicable Treasury Assumptions as of each participant's BCD. Excluded from the Class are Defendants and any individuals who are subsequently to be determined to be fiduciaries of the Plans.

ANSWER: Defendants admit that Plaintiffs purport to bring this lawsuit on behalf of a class of Plan participants and beneficiaries but deny that class certification is appropriate. Defendants deny any remaining allegations in Paragraph 78.

79. The members of the Class are so numerous that joinder of all members is impractical. Upon information and belief, the Class includes over a thousand participants and their beneficiaries. For the year ending December 31, 2019, there were over 60,000 active participants in the Plan and more than 21,000 participants who are retired and receiving benefits. Effective January 1, 2020, U.S. Bank then transferred the liabilities of 23,610 retired participants in the Plan to the Legacy Plan.

**ANSWER:** The allegations in Paragraph 79 state legal conclusions requiring no response. To the extent a response is required, Defendants deny those allegations.

80. Plaintiffs' claims are typical of the claims of the members of the Class because they arise out of the same policies and practices as alleged herein, and all members of the Class similarly had the amount of their Part B benefits reduced by the Plan's ECFs.

**ANSWER:** The allegations in Paragraph 80 state legal conclusions requiring no response. To the extent a response is required, Defendants deny those allegations.

- 81. There are questions of law and fact common to the Class and these questions predominate over questions affecting only individual Class members. Common legal and factual questions include, but are not limited to:
  - A. Whether the ECFs applicable to the Part B benefits cause participants to receive early retirement benefits that are less than the actuarial equivalent of the age-65 SLA;

- B. Which actuarial assumptions would provide a reasonable ECF to apply to Part B benefits to satisfy the actuarial equivalence requirement of ERISA § 204(c)(3);
- C. Whether Class members should receive higher monthly benefit payments; and
- D. Whether Plaintiffs and Class members should receive additional payments to compensate for past benefit payments that did not satisfy ERISA's actuarial equivalence requirement.

**ANSWER:** The allegations in Paragraph 81 state legal conclusions requiring no response. To the extent a response is required, Defendants deny those allegations.

82. Plaintiffs will fairly and adequately represent the Class and have retained counsel experienced and competent in the prosecution of ERISA class actions. Plaintiffs have no interests antagonistic to those of other members of the Class. Plaintiffs are committed to the vigorous prosecution of this action and anticipate no difficulty in the management of this litigation as a class action.

ANSWER: The allegations in Paragraph 82 state legal conclusions requiring no response. To the extent a response is required, Defendants deny those allegations.

83. This action may be properly certified under either subsection of Federal Rule of Civil Procedure 23(b)(1). Class action status is warranted under Rule 23(b)(1)(A) because prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants. Class action status is warranted under Rule 23(b)(1)(B) because prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class that, as a practical matter, would be dispositive of the interests of other members not parties to this action, or that would substantially impair or impede their ability to protect their interests.

# ANSWER: Denied.

84. In the alternative, certification under Rule 23(b)(2) is warranted because Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole.

#### ANSWER: Denied.

85. In the alternative, certification under Rule 23(b)(3) is warranted because the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

# ANSWER: Denied.

# FIRST CLAIM FOR RELIEF Declaratory and Equitable Relief (ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3))

86. Plaintiffs re-allege and incorporate herein by reference all prior allegations in this Complaint.

**ANSWER:** Defendants incorporate by reference all preceding answers as though fully set forth herein.

87. The Plans improperly reduce Part B benefits by using unreasonable ECFs. Throughout the Class Period, the early retirement benefits resulting from the Part B ECFs are less than the actuarial equivalent of the participant's age-65 SLA in violation of ERISA § 204(c)(3) and 203(a), 29 U.S.C. § 1054(c)(3) and 29 U.S.C. 1053(a).

# ANSWER: Denied.

88. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a participant or beneficiary to bring a civil action to: "(A) enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan."

**ANSWER:** The allegations in Paragraph 88 purport to characterize and/or quote a statute, which speaks for itself. Defendants deny any allegations that are inconsistent with the terms of that statute.

89. Pursuant to this provision, 28 U.S.C. §§ 2201 and 2202, and Federal Rule of Civil Procedure 57, Plaintiffs seek declaratory relief, determining that the ECFs applied to the Part B benefits do not provide an equivalent benefit to that which they would receive at age 65 and are inconsistent with reasonable actuarial assumptions.

**ANSWER:** Defendants admit that Paragraph 89 characterizes the relief that Plaintiffs seek. Defendants deny that Plaintiffs are entitled to any relief whatsoever.

- 90. Plaintiffs further seek orders from the Court providing a full range of equitable relief, including but not limited to:
- (a) re-calculation and correction of Part B benefits under the Plans previously paid using the Part B ECFs;
  - (b) an "accounting" of all prior Part B benefits and payments under the Plans;
  - (c) a surcharge;
  - (d) disgorgement of amounts wrongfully withheld;
  - (e) disgorgement of profits earned on amounts wrongfully withheld;

- (f) a constructive trust;
- (g) an equitable lien;
- (h) an injunction against further violations; and
- (i) other relief the Court deems just and proper.

**ANSWER:** Defendants admit that Paragraph 90 characterizes the relief that Plaintiffs seek. Defendants deny that Plaintiffs are entitled to any relief whatsoever.

# SECOND CLAIM FOR RELIEF Breach of Fiduciary Duty (ERISA §§ 1104 and 502(a)(3), 29 U.S.C. §§ 1104 and 1132(a)(3))

91. Plaintiffs re-allege and incorporate herein by reference all prior allegations in this Complaint.

**ANSWER:** Defendants incorporate by reference all preceding answers as though fully set forth herein.

92. The BAC and each of its members are named fiduciaries of the Plans and their participants and beneficiaries.

<u>ANSWER:</u> To the extent that Paragraph 92 purports to characterize the terms of the Plans, those are written documents that speak for themselves. Defendants deny any allegations that are inconsistent with the terms of those documents.

93. ERISA treats as fiduciaries not only persons explicitly named as fiduciaries under § 402(a)(1), 29 U.S.C. § 1102(a)(1), but also any other persons who in fact perform fiduciary functions. Thus, a person is a fiduciary to the extent "(i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan." ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). This is a functional test. Neither "named fiduciary" status nor formal delegation is required for a finding of fiduciary status, and contractual agreements cannot override finding fiduciary status when the statutory test is met.

**ANSWER:** The allegations in Paragraph 93 purport to characterize and/or quote a statute, which speaks for itself. Defendants deny any allegations that are inconsistent with that statute.

94. The BAC and each of its members are fiduciaries for the Plans and their participants and beneficiaries because they exercised discretionary authority or discretionary control respecting the management of such plan or exercised any authority or control respecting the management or disposition of Plans' assets. In particular, they had authority or control over the amount and payment of benefits paid when a participant with vested Part B benefits retired before age 65.

- **ANSWER:** The allegations in Paragraph 94 state legal conclusions requiring no response. To the extent a response is required, Defendants deny those allegations.
- 95. ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), provides that a fiduciary shall discharge its duties with respect to a plan in accordance with the documents and instruments governing the plan insofar as the plan is consistent with ERISA.
- **ANSWER:** The allegations in Paragraph 95 purport to characterize and/or quote a statute, which speaks for itself. Defendants deny any allegations that are inconsistent with the terms of that statute.
- 96. The Plans are not consistent with ERISA because the Plans' Part B ECFs result in a payment of benefits that is less than the actuarial equivalent of the age-65 SLA, in violation of ERISA §§ 204(c)(3) and 203(a), 29 U.S.C. § 1054(c)(3) and 29 U.S.C. § 1053(a).

# ANSWER: Denied.

97. In following the terms of the Plans that violated ERISA, the BAC and its members exercised their fiduciary duties and control over the Plans and their assets.

### ANSWER: Denied.

98. In following the terms of the Plans in violation of ERISA, the BAC and its members breached their fiduciary duties.

#### ANSWER: Denied.

- 99. ERISA imposes on fiduciaries that appoint other fiduciaries the duty to monitor the actions of those appointed fiduciaries to ensure compliance with ERISA. U.S. Bank appointed the BAC and in allowing it to pay unreasonably low benefits in violation of ERISA, U.S. Bank breached its fiduciary duties to supervise and monitor the BAC.
- <u>ANSWER:</u> The allegations in the first sentence of Paragraph 99 state legal conclusions requiring no response. To the extent a response is required, Defendants deny those allegations. Defendants deny the remaining allegations in Paragraph 99.
- 100. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a participant or beneficiary to bring a civil action to: "(A) enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan."
- ANSWER: The allegations in Paragraph 100 purport to characterize and/or quote a statute, which speaks for itself. Defendants deny any allegations that are inconsistent with the terms of that statute.
- 101. Pursuant to this provision, 28 U.S.C. §§ 2201 and 2202, and Federal Rule of Civil Procedure 57, Plaintiffs seek declaratory relief, determining that the ECFs applicable to the Part B

benefits violate ERISA because they do not provide an actuarially equivalent benefit to what a participant would receive at normal retirement age under the Plans.

ANSWER: Defendants admit that Paragraph 101 characterizes the relief that Plaintiffs seek. Defendants deny that Plaintiffs are entitled to any relief whatsoever. Defendants deny any remaining allegations in Paragraph 101.

- 102. Plaintiffs further seek orders from the Court providing a full range of equitable relief, including but not limited to:
- (a) re-calculation and correction of Part B benefits previously paid after the Plans' Part B ECFs were applied;
  - (b) an "accounting" of all prior Part B benefits and payments;
  - (c) a surcharge;
  - (d) disgorgement of amounts wrongfully withheld;
  - (e) disgorgement of profits earned on amounts wrongfully withheld;
  - (f) a constructive trust;
  - (g) an equitable lien;
  - (h) an injunction against further violations; and
  - (i) other relief the Court deems just and proper.

**ANSWER:** Defendants admit that Paragraph 102 characterizes the relief that Plaintiffs seek. Defendants deny that Plaintiffs are entitled to any relief whatsoever.

#### PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that judgment be entered against Defendants on all claims and request that the Court award the following relief:

- A. Certifying this action as a class pursuant to Federal Rule of Civil Procedure 23;
- B. Declaring that the Plans fail to properly calculate and pay retirement benefits for participants with vested Part B benefits who retire before age 65;
- C. Ordering Defendants to correct and recalculate Part B benefits that have been paid;
- D. Ordering Defendants to provide an "accounting" of all prior payments of Part B benefits under the Plans to determine the proper, actuarially equivalent amounts that should have been paid;

- E. Ordering U.S. Bank to pay all benefits improperly withheld, including under the theories of surcharge and disgorgement;
- F. Ordering U.S. Bank to disgorge any profits earned on amounts improperly withheld;
  - G. Imposition of a constructive trust;
  - H. Imposition of an equitable lien;
- I. Ordering Defendants to pay future Part B benefits in accordance with ERISA's actuarial equivalence requirements;
- J. Awarding, declaring, or otherwise providing Plaintiffs and the Class with all the relief available under ERISA § 502(a), 29 U.S.C. § 1132(a), or any other applicable law, that the Court deems proper, and such appropriate equitable relief as the Court may order, including an accounting, surcharge, disgorgement of profits, equitable lien, constructive trust, or other remedy;
- K. Awarding to Plaintiffs' counsel attorneys' fees and expenses as provided by the common fund doctrine, ERISA § 502(g), 29 U.S.C. § 1132(g), and/or other applicable doctrine; and
  - L. Any other relief the Court determines is just and proper.

**ANSWER:** Defendants deny that Plaintiffs are entitled to any relief whatsoever.

Defendants deny all other allegations of the Complaint that Defendants did not previously admit or otherwise address.

#### **DEFENDANTS' ADDITIONAL DEFENSES**

- 1. Plaintiffs' claims are barred by the doctrine of accord and satisfaction because they have been provided all the benefits due to them under the terms of the Plans.
- 2. Plaintiffs' claims are barred, in whole or in part, by the doctrines of laches, waiver, estoppel, and/or release.
- 3. The claims of Plaintiffs and the members of the putative class are barred in whole or in part by the applicable statutes of repose or limitations, including but not limited to ERISA § 413, 29 U.S.C. § 1113.
- 4. One or more of the Defendants are not, or were not, acting as fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1102(21)(A), with respect to certain purported misconduct alleged by Plaintiffs.
- 5. The claims of Plaintiffs and/or any other members of the putative class who have executed a waiver or release of claims against any or all Defendants may be barred by that waiver or release of claims.
- 6. The claims of Plaintiffs and/or other members of the putative class are barred, in whole or in part, by their lack of standing.
  - 7. Plaintiffs failed to exhaust the Plans' administrative remedies.
- 8. Plaintiffs seek benefits pursuant to an employee benefit plan governed by ERISA. Plaintiffs received or are receiving all benefits due under the terms of the Plans and the Plans' definitions of "Actuarial Equivalent" and are not entitled to any additional benefits.
- 9. Plaintiffs fail to state a claim upon which the Court can grant relief for a violation of 29 U.S.C. § 1054(c)(3) because, among other things, Plaintiffs' benefits were calculated according to the definition of "Actuarial Equivalence" set forth in the Plans.
- 10. To the extent any Defendant acted as a fiduciary with respect to the allegations in the Complaint, each Defendant reasonably construed the terms of the Plans and acted consistently with the Plans and ERISA.
- 11. Plaintiffs fail to state a claim upon which the Court can grant relief for a violation of 29 U.S.C. § 1053(a) because none of the Plaintiffs were denied any benefit upon the attainment of normal retirement age.
- 12. Plaintiff and putative class members are not entitled to any retroactive relief, including ongoing or future changes to their benefit amounts based on benefit calculations that were performed in the past.
- 13. The claims of Plaintiffs and/or other members of the putative class are barred, in whole or in part, by res judicata and/or collateral estoppel.
- 14. Plaintiffs seek relief inconsistent with the lawful terms of the Plans and/or the requirements of ERISA and other applicable laws and regulations.

Defendants do not knowingly or intentionally waive any applicable defenses or affirmative defenses and explicitly rely on such other defenses as additional information becomes available during discovery proceedings or otherwise. Defendants reserve the right to

amend their Answer and/or defenses accordingly and/or to delete defenses that it determines are not applicable as additional information becomes available during discovery proceedings or otherwise.

WHEREFORE, having answered Plaintiffs' Complaint in its entirety, Defendants pray for judgment as set forth below.

- a. An order dismissing the claims with prejudice;
- b. An order awarding attorney's fees and costs to Defendants; and
- c. Any such other and further relief as the Court deems just and proper.

Dated: November 7, 2022 Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

By: /s/ Melissa D. Hill

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# **CERTIFICATE OF SERVICE**

I hereby certify that on November 7, 2022, the foregoing document was filed electronically. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's ECF system.

/s/ Melissa D. Hill

Melissa D. Hill